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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 DASMONTAIWIAN JONES,

11 Plaintiff,

12 v.

13 PIERCE COUNTY JAIL,

14 Defendant.

CASE NO. 3:19-CV-05088-BHS-DWC

ORDER TO FILE AMENDED
COMPLAINT

15 Plaintiff Dasmon Taiwanese Jones, proceeding *pro se* and *in forma pauperis*, filed this civil
16 rights complaint under 42 U.S.C. § 1983. Having reviewed and screened Plaintiff's Complaint
17 under 28 U.S.C. § 1915A, the Court finds Plaintiff has failed to state a claim, but provides
18 Plaintiff leave to file an amended pleading by March 18, 2019, to cure the deficiencies identified
19 herein.

20 **I. Background**

21 In the Complaint, Plaintiff alleges Defendant Pierce County Jail ("the Jail") violated his
22 Fourteenth Amendment due process rights by housing him in an isolated jail unit and placing
23 him on phone restrictions. Dkt. 4.
24

II. Discussion

Under the Prison Litigation Reform Act of 1995, the Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must “dismiss the complaint, or any portion of the complaint, if the complaint: (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief.” *Id.* at (b); 28 U.S.C. § 1915(e)(2); *see Barren v. Harrington*, 152 F.3d 1193 (9th Cir. 1998).

A. Personal Participation

In order to state a claim for relief under 42 U.S.C. § 1983, a plaintiff must show: (1) he suffered a violation of rights protected by the Constitution or created by federal statute, and (2) the violation was proximately caused by a person acting under color of state law. *See Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). The first step in a § 1983 claim is therefore to identify the specific constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271 (1994).

To satisfy the second prong, a plaintiff must allege facts showing how individually named defendants caused, or personally participated in causing, the harm alleged in the complaint. *See Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988); *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981). A person subjects another to a deprivation of a constitutional right when committing an affirmative act, participating in another’s affirmative act, or omitting to perform an act which is legally required. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). Sweeping conclusory allegations against an official are insufficient to state a claim for relief. *Leer*, 844 F.2d at 633. Further, a § 1983 suit cannot be based on vicarious liability alone, but must allege the

1 defendant's own conduct violated the plaintiff's civil rights. *City of Canton v. Harris*, 489 U.S.
2 378, 385-90 (1989).

3 Here, Plaintiff provides vague, conclusory allegations that he is being denied due process
4 because he has been housed in the isolation units at the Jail for 16 months without a means to be
5 removed from the isolation units. *See* Dkt. 4, p. 3. Plaintiff names the Jail as the sole defendant
6 in this action. *See* Dkt. 4. Plaintiff, however, fails to allege any wrong-doing by the Jail or allege
7 how, specifically, the Jail's actions violated his constitutional rights. Therefore, Plaintiff has
8 failed to adequately explain what actions or inactions by the Jail resulted in the alleged
9 constitutional violation. Plaintiff also fails to allege who placed him in the isolation unit and
10 restricted his phone access. *See id.* at p. 3. Plaintiff's vague and conclusory allegations are
11 insufficient to show the Jail violated his constitutional rights. *See Jones v. Community*
12 *Development Agency*, 733 F.2d 646, 649 (9th Cir. 1984) (vague and mere conclusory allegations
13 unsupported by facts are not sufficient to state section 1983 claims).

14 If Plaintiff wishes to pursue this § 1983 action, he must provide a short, plain statement
15 naming individual defendants and explaining exactly what each defendant did or failed to do and
16 how the actions violated Plaintiff's constitutional rights and caused him harm.

17 *B. Improper Defendant*

18 Defendant, the Jail, is also not a legal entity capable of being sued under § 1983. Rather,
19 Pierce County, a municipality, would be the proper defendant. *See Monell v. New York City*
20 *Dept. of Social Services*, 436 U.S. 658, 690, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978); *Wright v.*
21 *Clark County Sheriff's Office*, 2016 WL 1643988, *2 (W.D. Wash. April 26, 2016). To set forth
22 a claim against a municipality, a plaintiff must show the defendant's employees or agents acted
23 through an official custom, pattern, or policy permitting deliberate indifference to, or violating,
24 the plaintiff's civil rights, or that the entity ratified the unlawful conduct. *Id.* at 690-91. A

1 plaintiff must show (1) deprivation of a constitutional right; (2) the municipality has a policy; (3)
2 the policy amounts to deliberate indifference to a plaintiff's constitutional rights; and (4) the
3 policy is the moving force behind the constitutional violation. *See Oviatt v. Pearce*, 954 F.3d
4 1470, 1474 (9th Cir. 1992).

5 Plaintiff has not named Pierce County as a defendant or alleged facts to show Pierce
6 County is liable. *See* Dkt. 4. If Plaintiff seeks to sue Pierce County, he must name Pierce County
7 as a defendant and allege facts sufficient to meet the required elements of a claim against a
8 municipality and show Pierce County violated his constitutional rights.

9 **III. Instruction to Plaintiff and the Clerk**

10 If Plaintiff intends to pursue a § 1983 civil rights action in this Court, he must file an
11 amended complaint and within the amended complaint, he must write a short, plain statement
12 telling the Court: (1) the constitutional right Plaintiff believes was violated; (2) the name of the
13 person who violated the right; (3) exactly what the individual did or failed to do; (4) how the
14 action or inaction of the individual is connected to the violation of Plaintiff's constitutional
15 rights; and (5) what specific injury Plaintiff suffered because of the individual's conduct. *See*
16 *Rizzo v. Goode*, 423 U.S. 362, 371–72, 377 (1976). Each claim for relief must be simple,
17 concise, and direct.

18 Plaintiff shall present the amended complaint on the form provided by the Court. The
19 amended complaint must be legibly rewritten or retyped in its entirety, it should be an original
20 and not a copy, it should contain the same case number, and it may not incorporate any part of
21 the original complaint by reference. The amended complaint will act as a complete substitute for
22 any previously filed complaint, and not as a supplement. The Court will screen the amended
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1 complaint to determine whether it contains factual allegations linking each defendant to the
2 alleged violations of Plaintiff's rights.

3 If Plaintiff fails to file an amended complaint or fails to adequately address the issues
4 raised herein on or before March 18, 2019, the undersigned will recommend dismissal of this
5 action as frivolous pursuant to 28 U.S.C. § 1915.

6 The Clerk is directed to send Plaintiff the appropriate forms for filing a 42 U.S.C. § 1983
7 civil rights complaint and for service. The Clerk is further directed to send copies of this Order
8 and Pro Se Instruction Sheet to Plaintiff.

9 Dated this 14th day of February, 2019.

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12 David W. Christel
13 United States Magistrate Judge
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